

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK  
TIMOTHY CHEROTTI,

Plaintiffs,

-v-

EXPHAND, INC. and FRANK NEMIROFSKY,  
Defendants.

CIVIL ACTION NO.: 20 Civ. 11102 (SLC)

**ORDER**

**SARAH L. CAVE**, United States Magistrate Judge.

On June 17, 2022, with the Court’s leave, Plaintiffs filed the First Amended Complaint. (ECF No. 89 (the “FAC”); see ECF No. 86). On July 18, 2022, after Defendants failed to respond to the FAC, the Court, inter alia, directed Plaintiffs to, by July 22, 2022, request a certificate of default as to Defendants from the Clerk of Court in accordance with Fed. R. Civ. P. 55 and S.D.N.Y. Local Rule 55.1. (ECF No. 90 at 1 (the “July 18 Order”)). Local Rule 55.1 requires a party applying for entry of default to file, inter alia, “an affidavit demonstrating that . . . the pleading to which no response has been made was properly served.” S.D.N.Y. Loc. R. 55.1(a)(3).

On July 21, 2022, Plaintiff applied for a certificate of default (the “Application”), and filed an affidavit from his counsel, Jonathan D. Plaut (the “Affidavit”). (ECF Nos. 91; 92). In his Affidavit, Mr. Plaut attests that “neither defendant has responded to the [FAC] or requested an extension of time to do so.” (ECF No. 92 ¶ 6). Despite having served the FAC on Defendants—who are represented by counsel (ECF No. 85)—by virtue of filing it on the Court’s electronic case filing system, Mr. Plaut did not attest, however, that the FAC was properly served, as required by

Local Rule 55.1. (ECF No. 92). See Fed. R. Civ. P. 5(b)(2)(E). As a result, the Application is deficient. (See ECF min. entry July 26, 2022).

Accordingly, by **July 29, 2022**, Plaintiff shall request a certificate of default as to Defendants from the Clerk of Court in accordance with Fed. R. Civ. P. 55 and S.D.N.Y. Local Rule 55.1, with an affidavit containing all required elements. All other terms of the July 18, 2022 Order remain in effect.

Dated:           New York, New York  
                  July 27, 2022

SO ORDERED.

  
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SARAH L. CAVE  
United States Magistrate Judge